

10/22/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
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Paper No. 21
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tourneau, Inc.

Serial No. 75/545,233

Alan H. Levine of Levine & Mandlebaum for Tourneau, Inc.

Brian J. Pino, Trademark Examining Attorney, Law Office 113
(Meryl Hershkowitz, Managing Attorney).

Before Hohein, Hairston and Bottorff, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Tourneau, Inc. to
register the mark shown below,

for "distributorship services in the field of watches."¹

The Trademark Examining Attorney has refused registration on the ground that the drawing filed with the application is not a substantially exact representation of the mark as used in connection with applicant's services, as illustrated by the specimens of record.

When the Examining Attorney made the refusal final, applicant appealed. Both applicant and the Examining Attorney filed briefs, but an oral hearing was not requested.

As specimens, applicant submitted copies of catalog pages. The mark, as it appears on the specimens, is reproduced below.

¹ Serial No. 75/545,233 filed August 31, 1988 and asserting first use and first use in commerce on April 1997. The words "CERTIFIED" and "PRE-OWNED" have been disclaimed apart from the mark as shown.

The Examining Attorney asserts that the drawing displays the mark as a circular design with a crossbar and the wording CERTIFIED TOURNEAU PRE-OWNED. According to the Examining Attorney, the applied-for mark differs from the display of the mark on the specimens, where a watch mechanism design appears in the center of the circular design and is "locked" in place by the crossbar. The Examining Attorney argues that this "unified design evokes the image of a watch." (Brief, p. 3). Further, the Examining Attorney maintains that the circular design, crossbar and watch mechanism design, in particular, are so merged together in presentation that the applied-for mark consisting of the circular design with the crossbar and wording cannot be regarded as creating a separate and distinct commercial impression from the watch mechanism design.

Applicant, on the other hand, maintains that the watch mechanism design is merely ancillary matter and partially hidden from view by the crossbar. Thus, applicant argues that the watch mechanism design is not an integral part of the circular design and crossbar and that the applied-for mark creates a separate and distinct commercial impression from the watch mechanism design.

Trademark Rule 2.51(a)(1) provides, in part, that "the drawing of a trademark shall be a substantially exact representation of the mark as used on or in connection with the goods[.]" Moreover, it is well settled that an applicant may apply to register any element of a composite mark if that element, as shown in the record, presents a separate and distinct commercial impression which indicates the source of applicant's goods or services and distinguishes applicant's goods or services from those of others. See, e.g., *In re Chemical Dynamics Inc.*, 839 F.2d 1569, 5 USPQ2d 1828 (Fed. Cir. 1988).

In this case, it is our view that the applied-for mark creates a separate and distinct commercial impression from the mark as shown on the specimens, which includes a watch mechanism design. Because the watch mechanism design is not particularly prominent and, in fact, is partially hidden by the crossbar, it would not be viewed by purchasers as an integral part of the circular design and crossbar. Moreover, although the watch mechanism design is contained within the circular design, it is not so interrelated therewith as to form part of a single design. Thus, this case is distinguishable from *In re Chemical Dynamics*, supra, where a medicine dropper intersected with the handle of a watering can and a drop of liquid

fertilizer was shown going into the can, such that the watering can, dropper and droplet formed a single unified design. Also, we are not persuaded that the mark, as it appears on the specimens, would be viewed by purchasers as the image of a watch. Apart from the watch mechanism design, there is nothing else in the mark that evokes a watch. For example, the circular design does not resemble a watch face and it would be highly unusual for a watch to have a crossbar on the face.

For the foregoing reasons, we find that the applied-for mark, i.e., the circular design and crossbar and the wording CERTIFIED TOURNEAU PRE-OWNED will be perceived as a mark separate and apart from the mark shown on the specimens.

Decision: The refusal to register on the ground that the drawing of the mark is not a substantially exact representation of the mark used on applicant's services, as illustrated by the specimens of record, is reversed.

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